

APPLICATION OF THE MULTIPLE STREAMS MODEL TO TRIBAL  
GOVERNMENTS PURSUING MEMBERSHIP ON THE HUMBOLDT COUNTY  
ASSOCIATION OF GOVERNMENTS

A Project

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by

Viola J. Brooks

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Abstract  
of  
APPLICATION OF THE MULTIPLE STREAMS MODEL TO TRIBAL  
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The Humboldt County Association of Governments (HCAOG) is a Joint Powers Agency, serving as the Regional Transportation Planning Agency as well as the Service Authority for freeway emergencies. One of the primary purposes of the HCAOG is to make recommendations on how to allocate limited transportation funding throughout the county. The Hoopa Valley Tribe has made multiple attempts since the mid-1980s to join the HCAOG as a voting member of the board. Now other Tribes located within Humboldt County want representation as well. Fairness is an issue for the Tribes as they believe continued denial has prevented them from participating fully and equally in the distribution of state and federal transportation dollars within Humboldt County. Fairness is an issue for the HCAOG, as Board members believe tribal governments do not play by the same set of rules to which they are subjected. There are no clear ground rules or regulations to govern interactions between these entities, a situation that causes

difficulties. Unanswered questions and uncertainties have created a reluctance by the HCAOG Board members to admit a tribe or tribal representative.

The specific focus of this research is on tribal governments and the Humboldt County Association of Governments and how a Joint Powers Agency can include multi-tribal membership. Primary data were obtained through e-mails, presentations, and correspondence from HCAOG staff and tribal representatives. Secondary data include evaluations of reports, studies, news articles, web pages, publications, meeting minutes, and legislative documents.

The purpose of this project was to increase understanding and promote collaboration in designing a mechanism for tribal representation as a voting member of the HCAOG. Specifically, it was for investigating how a Joint Powers Agreement can include one tribal seat that could represent multiple tribal governments. The results are presented in two parts. The first part evaluated the policy formation process using John Kingdon's (2003) Multiple Streams Model. The Multiple Streams Model indicates three independent streams: problems, policies, and politics. Policy changes occur when the streams align. The evaluation addressed the three streams, participants, role of local media, and policy entrepreneurs. The theory was used to evaluate whether the streams joined and conditions were favorable for adding one tribal representative seat to represent all the tribal governments on the Humboldt County Association of Governments.

The second part of this paper assisted in clarifying the issues around creating a request to be submitted by the tribal governments for acceptance in order to have tribal representation as a voting member of the HCAOG Board.

\_\_\_\_\_, Committee Chair  
Nancy Shulock, Ph.D.

\_\_\_\_\_  
Date

## DEDICATION

This paper is dedicated to Janice Taylor for her support and generosity and to Hilton Hostler for his efforts as the first Hoopa Valley tribal member to request a seat as a voting member on the Humboldt County Association of Governments, may they rest in peace.

## ACKNOWLEDGMENTS

I'd like to respectfully acknowledge the many people who have assisted me in my pursuit for a Masters Degree in Public Policy and Administration. Without the support and graciousness of many people, I would not have the opportunities I have today. First, I'd like to acknowledge and thank my parents for their encouragement and love, the Capital Fellows Program for starting my path at California State University Sacramento through participation in the Executive Fellowship Program, my family, friends, Ricardo Torres, and my employer, the Bureau of Indian Affairs, for encouraging my education, and, my professors, Nancy Shulock and Su Jin Jez, for providing me the opportunity to complete this thesis. Lastly, I would like to acknowledge and thank the Humboldt County Association of Governments, the Humboldt County tribal governments and their staff.

## TABLE OF CONTENTS

	Page
Dedication .....	vii
Acknowledgments.....	viii
List of Tables .....	x
List of Figures .....	xi
Chapter	
1. INTRODUCTION .....	1
Participants.....	3
Role of Local Media .....	11
Closing .....	12
2. STREAMS .....	14
Problem Stream.....	14
Policy Stream .....	22
Political Stream.....	30
3. ALIGNMENT AND CONCLUSION .....	34
Policy Window.....	34
Policy Entrepreneurs and Coupling .....	35
Conclusion .....	36
Appendix. Project Documents .....	41
References.....	69

LIST OF TABLES

Table	Page
1. Table 1.1 HCAOG Member Entities .....	5
2. Table 1.2 Humboldt County Tribes .....	7

## LIST OF FIGURES

Figure	Page
1. Figure 1 Importance of participants .....	11

## Chapter 1

### INTRODUCTION

Tribal governments in Humboldt County have made efforts to gain representation as voting members of the Humboldt County Association of Governments for many years. The Humboldt County Association of Governments (HCAOG) is a Joint Powers Agency composed of Humboldt County and each incorporated city located within the county. HCAOG serves as the Regional Transportation Planning Agency as well as the Service Authority for freeway emergencies. One of the primary purposes of HCAOG is to make recommendations on how to allocate limited transportation funding throughout the county. The criteria established for HCAOG membership include the requirement of being an incorporated city located within the boundaries of Humboldt County, which does not include local Tribes. To accommodate the aforementioned Tribal requests, policy change is necessary.

The processes involved in forming public policies are challenging, complex, and fluid. Important concepts for a student of public policy to know are timing, the confluence of impacting factors, and whether an issue is ready for advancement that will likely lead to policy formation and enactment. A tool to assist in determining whether a particular policy is ready for advancement is John Kingdon's Multiple Streams Model. As described in *Agenda, Alternatives, and Public Policies*, John Kingdon (2003) developed the Multiple Streams Model to assist in understanding agenda setting, alternative specification, and policy formation. Kingdon's theory was developed and

applied at the national level and the first edition of the book appeared in 1984 (Kingdon, 2003). The theory provides a framework for analyzing circumstances that generate action by policymakers. The model portrays three largely separate streams of problems, policies, and politics. Each of these streams has a life of its own and operates independently of the other streams. The streams join at critical junctures; it is at these junctures at which problems, policies, and politics align and policy changes are most likely to occur. An important concept of the model is to understand how these largely independent streams come together potentially leading to policy changes.

This paper shifts focus somewhat from the original application of the “streams” model by applying it to a contemporary tribal-local government setting involving the Humboldt County Association of Governments, its member entities, and the tribal governments located in Humboldt County. The application of Multiple Streams Theory in such context illustrates the utility of the theory, as it can be useful to apply the theory to a host of settings, including current and local issues.

The Multiple Streams Theory covers a wide range of concepts, some more relevant than others when applied to this topic. This paper does not intend to cover everything presented in the theory, but addresses the major concepts relevant to our understanding of the policy dynamics applied to acceptance of a tribal seat on the HCOAG Board. To clearly demonstrate the relevance of the Multiple Streams Model, each chapter of this paper addresses an important factor in applying the Three Streams Theory to the issue at hand: identifying the participants and the role of local media

[Chapter 1], understanding the three streams [Chapter 2], and alignment and policy entrepreneurs [Chapter 3]. This paper provides a discussion of how the Multiple Streams Model applies to policy formation involving multi-tribal governments joining a Joint Powers Agency.

Based on its fluctuating history and perseverance through political time, the issue of tribal governments seeking a tribal representative seat on HCAOG shows every indication it will be a continual part of the governmental arena. I evaluated the process leading to the Humboldt County tribes' request to the HCAOG and the outcomes using Kingdon's (2003) multiple streams theory to see if the time is right for policy enactment. The theory was used to evaluate whether the streams had joined and identified any constraints imposed on the addition of a tribal government representative to the Humboldt County Association of Governments.

### **Participants**

Participants are the players or stakeholders involved. The participants in this case involve different governmental entities but are all associated with the Humboldt County Association of Governments. The HCAOG is a Joint Powers Agency created because the County needed a transportation agency to coordinate projects and needed a designated regional transportation agency (HCAOG, n.d.). The main participants include HCAOG member entities, which are seven incorporated cities, Humboldt County, and eight federally recognized Indian tribes located in Humboldt County pursuing membership on the Board, together with their members and staffs.

The Multiple Streams Theory asserts an important distinction between actors inside and outside government and the roles they play in policy formation. People in governmental positions have formal authority granted to them that those outside of government do not enjoy and are bound by rules of accountability that those outside the government are not. In addition to the inside/outside distinction, the Multiple Streams Model identifies three factors in participant evaluation: a) the importance of each participant; b) the ways each is important and whether the agenda, the alternatives, or both are affected; and c) the resources available to each participant. Alternatives are proposals, options, or solutions rather than agendas. The Multiple Streams Theory also identifies whether participants are an impetus or a constraint to agenda setting or alternative specification. A participant who motivates or boosts a subject on an agenda, pushing a proposal into a more active place for consideration, is considered an impetus, while participants who limit the momentum of an agenda, or act as obstacles to progress, are considered to be constraints.

### **Internal Actors**

Participants on the inside the government identified in the theory include individuals such as elected officials, staff, political appointees, and civil servants. In this case, inside government participants are the HCAOG Board members, staff, and legal counsel. HCAOG Board members are important because they hold the formal authority for decision making. HCAOG Board Members affect both the agenda and alternatives by providing guidance and direction on decisions. The Board is composed of elected

officials from the County of Humboldt, the City of Arcata, City of Blue Lake, City of Eureka, City of Ferndale, City of Fortuna, City of Rio Dell, and City of Trinidad.

HCAOG Board member's entities are diverse in size and population as seen in Table 1.1.

Table 1.1

*HCAOG Member Entities*

HCAOG Member Entities	Year Incorporated	Square Miles (Census Bureau, 2010)	Population in 2011 (Census Bureau, 2010)
Humboldt County	1853 (Humboldt, 2012)	3,567.99	134,761
City of Arcata	1858 (Arcata, 2012)	9.10	17,248
City of Blue Lake	1910 (Blue Lake, 2012)	.6	1,253
City of Eureka	1856 (Eureka, 2012)	9.38	27,217
City of Ferndale	1893 (Ferndale, 2012)	1	1,372
City of Fortuna	1888 (Fortuna, 2012)	4.85	11,939
City of Rio Dell	1965 (Rio Dell, 2012)	2	3,250
City of Trinidad	1870 (Trinidad, 2012)	.43	311

HCAOG's greatest resource is its legal authority, as it must approve any amendments to HCAOG's cooperative agreement. While all the HCAOG member entities are important, for our discussion, Humboldt County, represented on the HCAOG board by a member of the county board of supervisors, can be considered the most crucial actor inside the government. HCAOG's Cooperative Agreement, which established the

Joint Powers Agency and its membership criteria, requires the approval of the County and four cities to amend the JPA. Humboldt County must approve any amendment to the HCAOG cooperative agreement or change to HCAOG membership will not occur. No other individual Board member has this formal authority. The County, as well as the other Board members, has been acting in neutrality rather than as a constraint or an impetus by continuing to request more information before taking the issue to vote.

Participants have different resources at their disposal. Kingdon (2003) asserts resources can give a group an advantage or disadvantage in affecting agendas and alternatives. HCAOG staff and legal counsel are important because they make recommendations in staff reports and provide legal opinions to the Board to aid in its decision making. They offer resources or expertise and influence the alternative selection rather than agenda selection.

### **External Actors**

The model identifies various participants outside the government, including interest groups, academics, researchers, consultants, the media, election-related participants, and the general public. Participants outside the government lack formal decision-making authority. In this case, outside government participants include the Humboldt County Tribes, their staff and legal counsel, media, and the general public. Tribes in this scenario are outside the government because they are not on the HCAOG Board. The tribes located in Humboldt County are the Bear River Band of the Rohnerville Rancheria, Big Lagoon Rancheria, Blue Lake Rancheria, Cher-ae Heights

Indian Community of the Trinidad Rancheria, Hoopa Valley Tribe, Karuk Tribe, Wiyot Tribe of the Table Bluff Rancheria, and the Yurok Tribe (see Table 1.2).

Table 1.2

*Humboldt County Tribes*

Humboldt County Tribes	Year Established (California Indian Legal Services [CILS], 2000)	Acres (Bureau of Indian Affairs [BIA], 2012)	Population (BIA, 2005)	Gaming (BIA, 2012)
Bear River Band of Rohnerville Rancheria	Terminated tribe, restored in 1983	192	291	Gaming
Big Lagoon Rancheria	Federal government purchased land for Rancheria in 1918.	23	17	No gaming
Blue Lake Rancheria	Federal government purchased land for Rancheria in 1918. Terminated 1958, restored 1983. 1989 adopted Constitution	74	51	Gaming
Cher-Ae Heights Indian Community, Trinidad Rancheria	Reservation established 1917. Adopted Articles of Association in 1961	96	171	Gaming
Hoopa Valley Tribe	Reservation created by Executive Order in 1876, Council since 1933	90,531	3,126 (Hoopa, 2012)	Limited Gaming
Karuk Tribe	Federally recognized 1979, Adopted Constitution in 1985	685	3,427	No gaming
Wiyot Tribe Table Bluff Rancheria	Reservation established in 1908, Terminated tribe, restored in 1983	88	526	No gaming
Yurok Tribe	Federally recognized in 1988, adopted Constitution in 1993	56,002	5,000 (Yurok, 2012)	No gaming

In this case, tribal governments are important because they are the instigators of the policy formation process through their desire for a voice in regional planning and transportation issues in the County. As well, in this case, Tribes are important because they generate the alternatives to be considered by those inside the government. The Tribes, through the Northern California Tribal Chairmen's Association, first came together through a single organized contact point to affect the agenda by making a formal request to HCAOG. The request triggered an investigation, which is required for a response to their request. The Northern California Tribal Chairmen's Association serves as an interest group outside the government.

The Tribes in Humboldt County, and other California tribes, have a complicated local history. While California Natives share some common characteristics with Native peoples elsewhere in the United States, the history of the Federal-Indian relationship is different in many aspects. It includes the unprecedented magnitude of non-native migration into California after the discovery of gold in 1848, the Senate's refusal to ratify the 18 treaties negotiated with California tribes during 1851-52, and the lawless nature of California's settlement including State-sanctioned efforts to "exterminate" the indigenous population (BIA, 2012). One such incident that occurred in Humboldt County involved the Wiyot people. In 1860, a group of local Eureka massacred the Wiyot, attacking two Wiyot villages and a sacred site where annual ceremony was held (California Indian Legal Services [CILS], 2000).

Another significant impact of the Federal-Indian relationship and policies in California is the resultant termination of tribal status by the federal government. Termination is the process by which Congress abolishes a tribe's government, distributes tribal assets, and ends (terminates) the federal government's trust relationship with the Tribe. The history of termination of tribal status is significant because in 1987, when the Hoopa Valley Tribe was requesting a seat on the HCAOG, there were fewer Tribes located in Humboldt County. Between 1954 and 1966, Congress terminated over 100 tribes, most of them in Oregon and California (Government Printing Office [GPO], 1977). A shift in federal policy ended the termination era and ushered in a period of critical examination of the termination process. This resulted in a number of lawsuits; the most significant in California was the class action lawsuit *Tillie Hardwick v. United States of America*, U.S. District Court for the Northern District of California, No C-79-1710-SW. The litigation, settled in the 1980s, resulted in the untermination of 17 California tribes that had been terminated. The litigation reestablished tribal status and confirmed reservation boundaries.

For over 20 years, the Hoopa Valley Tribe was the only Tribe that had legislation authorizing their membership to join HCAOG. While it may appear that no other Tribe in Humboldt County was interested, due to shifting federal policy and decades of litigation with the federal government, other tribes were just getting organized. Pursuing HCAOG membership was not a priority of most tribal governments until recently. Humboldt County Tribes are diverse and range from small to large in size and

population. Table 1.2 refers to actual members of the tribes as opposed to the population living within tribal jurisdictional boundaries.

Cohesion is a resource the Tribes are employing in Humboldt County. Tribes have convinced the HCAOG they speak with one voice and are truly representing the preference of the majority of tribes in Humboldt County. The three most visible tribal participants are the Hoopa Valley Tribe, the Cher-Ae Heights Indian Community, and the Blue Lake Rancheria. The Karuk Tribe and the Yurok Tribe are also interested, while the smaller tribes, Big Lagoon, Wiyot, and Bear River Tribes are less active. The tribal governments have demonstrated cohesion through two tribal forums, the Northern California Tribal Chairmen's Association and the North Coast Tribal Transportation Commission.

Kingdon (2003) indicates decision makers must be aware of participants who can impact the economy. Tribes in Humboldt County include large tribes, such as the Hoopa Valley, with significant resources including large populations, territories far larger than many cities, and annual budgets of tens of millions of dollars. As well, while some tribes are quite small, with limited acreages and populations, those located near population centers have prospered, taking advantage of economic booms offered by gaming. Economic resources available to tribes have shifted the political landscape. HCOAG opponents to tribal membership fear that tribal ability to impact the economy could have potential for politically disastrous consequences. In this case, the ability of tribal government to donate to local individual campaigns has emerged as a significant concern

and one that may motivate action. Opponents perceive that a tribe’s ability to make political contributions could influence or have the appearance of influencing election results and ultimately HCAOG decision makers. Interestingly, the desire to abate this concern may impact HCAOG membership as opponents seek to bargain a tribal seat in exchange for limits on tribal campaign contributions.

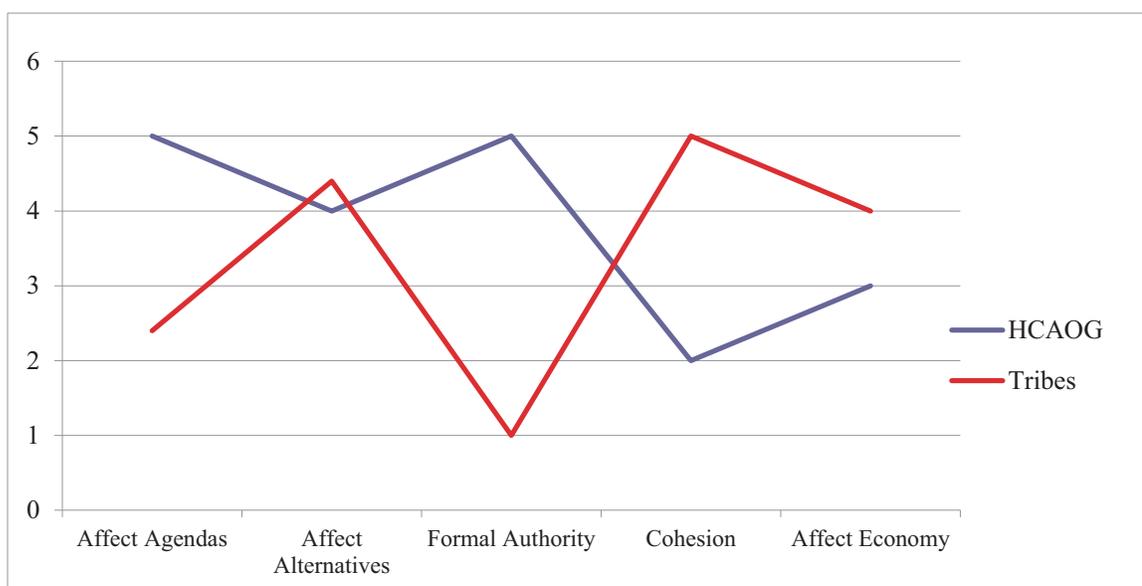


Figure 1. Importance of participants.

**Role of Local Media**

The media is an outside the government participant. The Multiple Streams theory reflects that the media reports on governmental agendas rather than influences them. The media do not originate proposals. Their role is mainly to present issues and then magnify or minimize problems and proposals. The media is important because it can reflect public sentiment and shape public opinion, thus influencing the political stream.

The local media was not actively covering the issue of adding a tribal representative seat on HCAOG until recently. There were no articles regarding this issue prior to November 2012, when two articles appeared in the *Times Standard*, the local Humboldt County paper. The first appeared on November 11, 2012, prior to the HCAOG Board meeting held on November 15, with the second article appearing on the day following the meeting on November 18. Negotiations between HCAOG and the tribes had progressed to a point at which the local media was able to report on the news, including constraints that have stalled membership, as well as available options and conditions favoring particular approaches. This demonstrates the accuracy of the Three Streams model as it reflects the role of the media in bringing the issue to the public's attention and accurately reporting on the issue's current momentum. While there is no evidence the media coverage is influencing proposals, participants, or attempting to overly sway public opinion, the coverage is significant in the forward current of the issue in that it influences the alignment of the streams.

### **Closing**

Many participants are involved in agenda setting, the development of alternatives, and the choices among those alternatives. Further, there is a difference between governmental agendas and decision agendas. Governmental agendas include subjects to which people in and around government are paying serious attention. Decision agendas include only those subjects moving into position for some sort of authoritative decision, such as legislative enactment or presidential action (Kingdom, 2003). Consistent with the

Multiple Streams Model, the media indirectly impacted public opinion by capturing the momentum on the subject, as opposed to directly pushing or opposing a proposal. In addition, participants inside the government largely affect the agenda setting while staffers largely affect the alternatives. The Multiple Stream Model references interest groups, the tribes in this case, as the most important outside government actor affecting agenda setting. This is true as demonstrated by the Northern California Tribal Chairmen's Association lobbying for tribal representation in the HCAOG. This paper continues by discussing the roles of participants, their connections to the three streams, and how their involvement impacts the policy formation process involving multi-tribal governments joining a Joint Powers Agency.

## Chapter 2

### STREAMS

#### **Problem Stream**

The problem stream determines if an issue is considered a problem worthy of governmental decision makers' attention and if action is necessary. A key concept in analyzing this stream is the distinction between conditions and problems. The major distinction is that a condition is something that, while perhaps unpleasant, is tolerated. A problem is something that warrants attention and is considered severe enough that action by decision makers is appropriate. We tolerate a number of conditions every day, ranging from bad traffic to climate change. Conditions come to be defined as problems when we decide we should do something about them. The Bush Administration perceived climate change as a condition; while it may impact some negatively, it was not accepted as a problem severe enough for government action. Conditions can evolve into problems under certain circumstances. For example, the rise in indicators such as the increase in global temperature and the melting of the polar ice caps, in addition to focusing events such as Hurricane Katrina and Super Storm Sandy, all elevate climate change from a condition to a problem that warrants government attention. These factors, in addition to the change in the political landscape that occurred with the recent re-election of President Obama, are all present circumstances elevating the condition to a problem.

Since the late 1980s, the Hoopa Valley Tribe sought admittance to the HCAOG. The Hoopa Valley Tribe and others have perceived its non-admittance as a condition, not a problem. In more recent times, Tribes became interested in joining HCAOG but also accepted their exclusion from the Board as a condition so as not to engage decision makers in remedying the situation.

Problem recognition is important and can be viewed at many levels. Problem recognition is critical to agenda setting because if it is not perceived as a problem, then nothing will be done by government to address it. As previously indicated, Tribes accepted HCAOG's denial of their request as a condition. Tribal membership on HCAOG was not elevated to a problem for many years because it was not prominent on the HCAOG's agenda. This is changing due to the passage of significant legislation, further explained later in the chapter. Tribal participants were aware of this legislation and used it to their advantage to help elevate the subject from a condition to a problem by definition and providing it visibility and recognition.

Conditions can shift to problems with the aid of problem definition. Certain present factors assist problem definition. Factors identified in the Multiple Streams framework that are relevant here include values and comparisons. The values factor is significant because our values shape how we perceive things. Kingdon (2003) applies the idea of values to affordable medical care in terms of whether access is perceived as a right or a privilege. If one's values perceive access as a right, then access is something government should guarantee. On the other hand, if access to affordable medical care

would be nice but is not a right then the lack of access would remain defined as a condition rather than a problem worthy of governmental intervention.

The comparisons factor is significant because relative disadvantages can define problems. In this case, as tribes become increasingly active players in the local economy, they increasingly see participation as a right. Tribes exercise responsibility for meeting transportation needs in the County and perceive participation in the regional transportation planning body as a responsibility. Equity considerations are a significant factor when addressing both values and making comparisons. Equity considerations are a significant factor when addressing comparisons, as well. For example, the Hoopa Valley Tribe has more roads and a larger population than some voting members of HCAOG, such as the cities of Blue Lake, Trinidad, or Rio Dell.

The Hoopa Valley Tribe has made multiple attempts since the mid 1980s to join HCAOG as a voting member of the board. The Hoopa Valley Tribe believes the eastern area of the county, where the Tribe is located, receives limited transportation funding and allocations for public transit. Now other Tribes located within Humboldt County want representation on HCAOG, too. At stake is who controls the decisions for the region's transportation planning and programming arena including state highway, local street and road improvements, and public transportation resources. Fairness is an issue, as the tribes believe continued denial has prevented them from participating fully and equally in the distribution of state and federal transportation dollars within Humboldt County. The Tribes desire a seat at the table to better coordinate resources and inform the project

prioritization process. Some HCAOG member cities from the northern part of the county agree with the Tribes and believe the Tribes have a valid desire to want to participate and represent their area of the County.

State law is limited when applied to Tribes. Tribes are not generally subject to state law due to their unique political status secured for them by federal law, which defines tribes as quasi-sovereign nations. A tribe's unique status allows them to do things members of the HCAOG find problematic, like donate to campaigns, something the state does not allow its subdivisions to do. Tribal governments can endorse and donate to individual candidates or initiatives.

On the one hand and for some purposes, tribes in California are essentially state citizens subject to many authorities and corresponding responsibilities of the state. On the other hand and for some purposes, they are quasi-sovereigns exercising exclusive or concurrent jurisdiction. They possess powers similar to and in some cases equal to a state. Like a state, if they so choose, tribes may create political subdivision and they may legislate to facilitate business relations, including adopting corporation codes, etc. Indian tribes as quasi-sovereign governments possess a unique political status that is unfamiliar and even suspect to state and local officials, creating challenges when these governmental entities attempt to work together, thus leaving tribes to feel they miss out on opportunities to be represented.

HCAOG members opposing tribal membership represent the southern part of the county. They have expressed concern regarding the lack of clarity of jurisdiction and the

fact that the Tribes are not subject to state law as other member entities and cited them as reasons to deny the Tribes' request (Bender, 2006). More specifically, HCAOG Board members have raised concerns that Tribes are not subject to the same laws as cities and counties, such as the Brown Act and laws regarding political campaign contributions (HCAOG, 2012). Opponents also argue that admitting the Hoopa Valley Tribe, or any one Tribe, will open the floodgates for entry of the seven other tribes who could then assume control of the agency. HCAOG has indicated it does not support admittance of every Tribe on the Board (Bender, 2006).

After the Hoopa Valley Tribe received state legislation allowing them to join HCAOG, they did not request a seat until 2006. The reason for the Tribe not actively continuing to pursue a seat on HCAOG is unknown. Kingdon (2003) suggests problems fade in and out and drop out altogether as attention is turned elsewhere. In early 2000, Tribes began to submit proposals and were allowed on HCAOG's Technical Advisory Committee, TAC. Tribes submitted projects to the TAC in the same manner as other projects are submitted for consideration to HCAOG. Funds were identified for Native American projects based on population, mileage, ratios, and roads (Hostler, 2011). This was the first instance in which tribal governments had input in regional planning efforts in Humboldt County. HCAOG made an administrative decision to fund tribal projects and allow tribal representatives on TAC. Some could argue that HCAOG addressed the subject by providing a mechanism for tribal input. Tribes would argue it is still not

enough, but a loss of enthusiasm for addressing the problem caused it to fade from the agenda.

The condition was elevated to a problem with the assistance of a focusing event, passage of legislation by the California State Government. Assembly Member Nestande authored AB 307, which amended the Joint Powers Act to include a tribal government as a public agency for the purpose of joining Joint Powers Agencies (Nestande, 2011). AB 307 exemplifies how federally recognized Tribes, local governments, and public agencies can come together on a government-to-government basis and cooperatively work to effectuate change in their communities under the structure provided within the Joint Powers Act. As an example, in southern California, many Tribes have professional fire and EMS response capabilities that must be given the opportunity to join forces and play a vital role in wildland fire protection and emergency medical responses (Jacob, 2011).

Assembly Member Nestande and the passage of AB 307 are significant in this case because the legislation authorized a tribe to join a state charter entity. Assembly Member Brian Nestande is a Republican representing the 64<sup>th</sup> District in southern California, which includes the Palm Desert area and a portion of Riverside County (Nestande, 2012). He was first elected in 2008, re-elected in 2010, and again in 2012 (Lay, 2012). He is the Vice-Chairman on the Assembly's Committee on Governmental Organization, which has jurisdiction over Indian gaming (Nestande, 2012). Fourteen tribal governments in Riverside County have a majority of tribes operating casinos (Lay, 2012). In the 2010 election, five California gaming tribal governments donated \$33,000

to his campaign. In the 2012 election, nine gaming tribal governments donated thousands of dollars to his campaign (Lay, 2012).

With the advent of gaming, the visibility and resources of tribal governments increased over time, as did the frequency of tribal requests to join JPAs. Tribal requests increased while California's economy struggled. California's weak economy created hardships for many local municipalities that could take advantage of partnering with tribes. Nestande indicated the intent of his measure would authorize tribal governments to participate in joint powers agreements with California state and local governments. This legislation acknowledges the wish of local governments to include tribal government participation on public projects of mutual interest (Nestande, 2012). It appears the motivation behind AB 307 was both for the public good and for pleasing campaign donors. In addition, tribal and non-tribal agencies work together on any number of public projects of mutual interest but a new piece of legislation had to be introduced to and passed by the Legislature every time. The State Legislature did not want to have to enact special legislation each time a federally recognized Tribe sought to join a JPA; therefore, they amended the Joint Exercise of Powers Act. California Government Code Section 6500 now defines a public agency as follows:

As used in this article, "public agency" includes, but is not limited to, the federal government or any federal department or agency, this state, another state or any state department or agency, a county, county board of education, county superintendent of schools, city, public corporation, public district, regional

transportation commission of this state or another state, a federally recognized Indian tribe, or any joint powers authority formed pursuant to this article by any of these agencies.

This legislation lifted a previously existing barrier and now a federally recognized Indian Tribe is considered a public agency for the purposes of JPAs, such as HCAOG.

The focusing event was AB 307 passage, allowing Tribes to join JPAs, like HCAOG, increased momentum for the subject to be elevated on the agenda. Tribal governments' growing presence and increasingly vocal segments of the tribal community identified tribes' exclusion from the board as unacceptable. Tribal efforts increased awareness and elevated it from a condition to a problem.

The subject gained further momentum and full attention after the request for a multi-tribal seat from the Northern California Tribal Chairmen's Association, NCTCA. It was another focusing event, serving as the main factor in gaining visibility for the issue and putting pressure on policymakers to do something, as they needed to respond to the request. The passage of AB 307 accompanied by the request from the NCTCA are unusual events that highlight the problem of the Tribes not being represented equally on the Board that makes decisions impacting the entire county.

For the purposes of this case, participants identified two interrelated problems. The first identified problem is the denial of tribal governments to be represented on the Board as voting members. The second identified problem is the lack of clear ground rules or regulations to govern interactions between tribal and non-tribal entities.

Unanswered questions and uncertainties about the status of tribal governments and the rules that govern them have created reluctance in board members with regard to admitting a tribe or tribal representative. Any viable alternative will need to address both problems for a chance at successful policy enactment.

### **Policy Stream**

The Multiple Streams Theory introduces a concept of a primeval soup when discussing alternatives. The soup contains a large number of basic ideas and concepts behind a given proposal that float around freely until such a time as they are made prominent. The proposals in the primeval soup are floating around independently of a specific problem on the agenda. The Multiple Streams Model indicates it is not necessary for a problem to be developed prior to an alternative; instead, proposals float around in the soup until participants go look for them once the problem rises and is ready to be addressed.

The theory discusses the processes by which policies are generated, redrafted, and accepted for serious consideration. Much of this process takes place in communities of specialists referred to as policy communities. There are policy communities inside and outside the government. A policy community inside HCAOG would be its Technical Advisory Committee. A policy community outside the government on the local level would be the tribal governments and their staffs, while the policy community can be broader and include participants across the nation who work on local-tribal government issues.

The tribal governments in Humboldt County have expressed interest in having a voting seat on the HCAOG board. Investigating the issue has led to the discovery of several main alternatives, some that have been floating around in the soup and others that have newly emerged.

Alternatives can be created in two primary ways, either a proposal is created to identify solutions to specific problems or it has already been developed and is floating in the policy stream prior to problems arising. The proposals generated by the tribal policy community were generated in both ways. The alternatives were presented for consideration by the HCAOG Board when attempting to answer how a JPA can include multi-tribal membership as follows:

- A. Do nothing (Zero tribal seats);
- B. Each Tribe joins (Eight tribal seats);
- C. A tribal association or consortium joins (Multiple tribes, one tribal seat)
- D. Form a tribal JPA and the JPA joins (Multiple tribes, one tribal seat); and
- E. Delegation of tribes joins (Multiple tribes, one seat)

The Multiple Streams Theory indicates the chances of an alternative surviving are increased when it meets internal and external criteria. Internal criteria can include technical feasibility, value acceptance, and equity considerations. Technical feasibility regards alternatives as worked out and capable of being implemented. Value acceptance means they are acceptable to policy communities and decision makers and include concepts of equity and efficiency. Value acceptance in this case applies to the member

entities governing bodies as each member representative indicated the issue would be taken back to the members' Councils for consideration before offering consent. Equity considerations are big in this case because equity is what it is about, what is fair to whom. The alternatives up for consideration are described and then evaluated by using the criteria for survival identified in the model. The agenda on which the proposal is ready to be advanced is identified for each proposal.

**A. Do Nothing (Zero tribal seats)**

This alternative maintains the status quo. Tribal governments are able to submit project proposals like other participants and are included on the Technical Advisory Committee. This proposal is technically feasible as it is already occurring but does not pass the value acceptance for all Tribes. Despite this alternative not passing the values test by the Tribe, this proposal is ready for the decision agenda.

**B. Each Tribe Joins (Eight tribal seats)**

This proposal would allow for any of the Tribes in Humboldt County to individually join HCAOG, with the potential for eight tribal governments to each represent their own interests on the Board. This is technically feasible because the possibility of all Tribes joining is present; however, it does not meet a value acceptable by the Board. Also, this proposal would require hammering out additional issues involving tribes, such as limiting campaign contributions, application of the Brown Act and the Regional Housing Needs Assessment, and sovereign immunity. Most issues pertain to the application of state law to tribal governments, and sovereign immunity is

the doctrine that precludes the assertion of a claim against a sovereign without the sovereign's consent. This proposal is not ready for the governmental or decision agenda.

### **C. A Tribal Association or Consortium Joins (Multiple tribes, one tribal seat)**

This would specifically respond to the request made by the Tribal Chairmen's Association and is considered the Consortium approach. This approach is a convention commonly associated with federal initiatives (Risling, 2012). Similar in concept to the joint powers approach, it is a mechanism allowing multiple tribes to cooperate in pursuing federal programs. While familiar to tribes, it is not a concept that squarely "fits" into the JPA setting, as an association, coalition, or other organization not identified in section 6500 of the Government Code is not a public agency for purposes of the Joint Exercise of Powers Act. HCAOG legal counsel and the Office of Tribal Attorney, Hoopa Valley Tribe agree this is not a technically feasible alternative. Similarly, a cooperative effort delineated as a coalition may encounter this same challenge and not meet the technical feasibility criteria because it does not meet the definition of a public agency in the JPA government code.

Through the Chairmen's Association, the Tribes responded to the "flood gates" concern, agreed to one tribal seat and, thus made the request to HCAOG. A problem remained, however, as an organization of tribal governments (multi-tribal), or of tribal leaders such as the Chairmen's Association, does not meet the definition of public agency. Rather, *a federally recognized Indian tribe* is included as a public agency authorized pursuant to California Government Code Section 6500 to enter into a joint

powers agreement. Questions immediately arose regarding the legality of the request, but also regarding the mechanics of it. This is not ready for a government or decision agenda.

**D. Form a tribal JPA and the JPA joins (Multiple tribes, one tribal seat)**

This proposal provides for the Tribes in Humboldt County to create a tribal JPA. Tribal participation in a JPA involves interplay of state, tribal, and federal law. A single tribal JPA, created in accordance with state law, would join to represent multiple tribes in accordance with the tribal JPA's governing documents. California law expressly identifies a tribe as a public agency eligible to participate in a joint powers agreement. Nevertheless, while state law specifies "a tribe" may join a joint powers agency, it does not specify how a tribe may execute the act. California law also authorizes any of the identified public agencies to form joint powers agencies, which in turn, may participate in a joint powers agreement. Hence, as a matter of state law, multiple tribes may enter into a joint powers agreement that identifies a single representative of that tribal joint powers agency to represent multiple member tribes on HCAOG. Recreation of an earlier version just changed to increase the chance of evaluation on agenda.

This proposal is technically feasible, has the greatest value acceptance by the participants and is ready for the governmental agenda. More discussion is required to decide if the Tribal JPA would be subject to California laws associated with JPAs and if sovereign immunity and campaign contributions would still need to be addressed because

the tribal seat would not be occupied by one tribe, rather by a tribal JPA. Or perhaps the creation of the state-chartered JPA would address those concerns.

**E. Delegation (Multiple members, one seat)**

Many tribes exercise governing authority through delegations, generally achieved through a duly adopted resolution. Multiple tribes may designate a single representative to represent each tribe on HCAOG. In this instance, multiple tribes would be members, but all would be represented through a single seat. The terms of the delegating resolution should address the mechanics of the arrangement.

An example is the United Indian Health Service, UIHS, the tribal health program of several tribes operating federal contracts under federal self-determination laws. To pool and maximize resources, each tribe designates, via a duly adopted tribal resolution, that UIHS program is its agent to carry out its tribal health program. By virtue of the delegation, UIHS is each tribe's health program.

The delegation approach is also used by Tribes in matters related to housing or social services, as it can provide services to Indian residents in a specific geographical area when it is administratively feasible to provide an adequate level of service within the area. Recreation of an earlier version just changed to increase the chance of evaluation on agenda. Similarly, multiple tribes may designate a single representative to represent each tribe on HCAOG. In this instance, multiple tribes would be members, but all would be represented through a single seat. The terms of a delegating resolution and any government documents of the representative entity would need to address the

mechanisms of the arrangement. Under this scenario, multiple tribes would be members, although by virtue of tribal legislative action (the delegating resolution), multiple tribes would be represented by a single tribal representative exercising a single vote on their behalf. Since multiple tribes would technically be members, it is likely provisions would be in order to address concerns identified by HCAOG such as application of the Brown Act, limitations on campaign contributions, and sovereign immunity.

This alternative is technically feasible but was not well received by HCAOG making this an unlikely alternative. This alternative would satisfy the values and desires of the tribes but would need to be further clarified due to uncertainty of subjecting each tribe to state law if they join HCAOG.

### **Constraints**

The HCAOG Board has consistently identified constraints when discussing adding a tribal representative seat. The tribal community, as a policy community, is aware of these constraints their proposals will face. The constraints identified in the Multiple Streams Theory discuss budgetary constraints and public acceptance. Budgetary constraints are not significant in this case because tribal projects are included in HCAOG's work plans; hence, Tribes are already sharing the HCAOG budgetary resources. Further, constraints for the purposes of this paper involve application of the Brown Act, campaign contributions by tribes, Regional Housing Needs Assessment, and sovereign immunity. The Brown Act refers to transparency and open meeting laws, Regional Housing Needs Assessment refers to the housing allocations in the county, and

campaign contributions refers to tribal governments' ability to donate to individual campaigns. These constraints pertain to the uncertainty of applications of state law to tribal governments and whether the state laws would be imposed on tribes by their participation in the HCAOG. Sovereign immunity is the doctrine precluding the assertion of a claim against a sovereign entity without their consent. Tribal governments must consent to suit, similar to the federal government, usually by agreeing to a limited waiver of sovereign immunity for the purposes of satisfying a project. Any proposal that has a chance of making it on to the decision agenda must address these constraints as they are deal breakers identified by the HCAOG Board.

### **Softening up and Policy Entrepreneurs**

The Multiple Streams Model introduces the concept of “softening up” ideas. The Tribes have been softening up the idea of adding a tribal representative for decades. The softening-up process begins when decision makers are presented with proposals. They then evaluate them, discuss them with one another, hear evidence in support or opposition, and work through problems that arise when discussing the proposal. Tribes are continuing the softening-up process.

Kingdon (2003) described a policy entrepreneur as an important player arising from participants. Policy entrepreneurs are advocates for proposals or ideas. They invest time, energy, resources, and reputation into an alternative or proposal in the hope of some future return. In this instance, the idea is adding a tribal representative seat on HCAOG and regardless of the alternative selected, the return is the actual inclusion of a tribal

representative on the Board. The Chief Executive Officer of the Cher-Ae Heights Indian Community has been a policy entrepreneur for the longest period of time. Prior to her employment with the Trinidad Rancheria, she worked for the Hoopa Valley Tribe and advocated for their inclusion as well as current inclusion of other Tribes in the county. In addition to her history of advocacy for the subject, she was instrumental in identifying the open policy window and was able to bring HCAOG's attention to the focusing event of AB 307 passage. The Director of Economic Development of the Blue Lake Rancheria and the Office of Tribal Attorney, Hoopa Valley Tribe are also policy entrepreneurs, as they commit time and expertise to the subject.

The Tribes created a number of viable alternatives for consideration of HCAOG ensuring a high placement of the subject on the governmental agenda, which increases the chance of placement on the decision agenda. HCAOG narrowed down the selection process to the tribal JPA alternative, so it is the most likely alternative. It passes the criteria for survival but still has a few items needing to be clarified before it can officially be moved on to the decision agenda.

### **Political Stream**

The final stream in the Multiple Streams model is the political stream and is a vital part of the policymaking process. This stream flows autonomously of the others and can serve as an inhibitor or promoter of proposals and agenda setting. This stream impacts agenda setting significantly as a result of the major changes that occur within the stream, such as a change in key elected officials or shifts in the public mood.

An important component of the political stream is public mood. For the purposes here, when discussing public mood, I address it at the regional level. It is important for those in and around government to be aware of the public mood and any potential shifts that might occur. The mood determines whether or not there is fertile ground that can stimulate growth of an initial idea. Participants inside government must be concerned with the public mood because it can drive election results and set the tone for determining which subjects will be receptive and eligible for promotion on the agenda or who will need to be restrained.

The public mood regarding adding a tribal government representative seat on the HCAOG has been mostly neutral. There has been minimal participation by the general public, as only one individual has spoken during the public comment portion of the HCAOG meeting concerning this issue. He echoed sentiments already indicated by the participants, that one tribal seat should be allowed on the board to represent tribal governments' interest after clarifying what California laws would apply. This demonstrates this issue is not crucial from the standpoint of the general public and there is no evidence indicating policy entrepreneurs or others are attempting to shape public opinion.

Another important component of the political stream is organized political forces. Organized forces can be interest groups, political parties, or any group that has similar interests and organizes in favor or opposition of their issue. Their role reflects widespread support or opposition to an agenda item or proposal. Tribal governments

have rallied together as an organized political force to support their initiative of adding a tribal seat on the HCOAG. The Tribe's most visible organized political force is the Northern California Tribal Chairmen's Association. There are no visible organized political forces that have risen against tribal governments having a membership seat on the HCAOG.

The final component in the political stream concerns the events occurring within government. The Multiple Streams Model discusses this component as regarding changes in elected officials such as the Administration (President and Political Appointees), Congress, and key personnel. For our purposes, the changes in elected officials occur at the local level, as HCAOG Board members and tribal governments both have elected officials. Turnover of key officials impact agenda items (Kingdon, 2003). For our purposes, key officials are the HCAOG Board members and key personnel are HCAOG's staff. Most significantly for HCAOG is the announcement from the Mayor of Ferndale (who is also the chairman of the HCAOG Board) that he would not seek reelection and will be leaving office when his current term expires at the end of 2012. He is a key political factor because he was previously unsupportive of the tribal seat but has recently indicated he is supportive of the subject if key issues are worked out. Turnover of elected officials serving on the HCAOG Board has been witnessed by the tribes. Tribal representatives have stated they are required to re-educate the new Board members that sit on HCAOG, as they are not familiar with the history or subject matter; re-education generally causes delays or setbacks.

There is consensus building in the political stream (Kingdon, 2003). The Multiple Streams Model indicates the political stream operates using bargaining, “you give me my provision, and I’ll give you yours,” rather than using persuasion, “let me convince you of the virtue of my provision.” At first, Tribes attempted to use persuasion processes and asserted they would not be taking funding from HCAOG or changing HCAOG’s project processes, rather they could bring additional funding to the table. The Tribes did not do a good job conveying this to the Board. Further, the persuasion approach was not well received by the HCAOG Board, as it did not adequately address HCAOG’s concerns.

Tribes and HCAOG then used the bargaining process. Bargaining involves exchanging something. The HCAOG Board is using the multi-tribal seat in negotiations with the Tribes. Tribes are bargaining with the issues identified by the HCAOG Board, including not donating to individual campaign for candidates who serve on HCAOG, not voting in Regional Housing Needs Allocation issues, ensuring the tribal JPA representative abides by the Brown Act, and agreeing to a limited waiver of sovereign immunity for a seat on the Board. The Tribes are addressing HCAOG’s fairness concerns and agree to give up some of its rights as a Tribe in exchange for a seat on the Board. These activities in the political stream are relatively conducive to advancing the issue to the decision-making agenda, as the composition of the Board appears supportive, there are no organized political forces opposed to the subject, and bargaining has been successful.

## Chapter 3

### ALIGNMENT AND CONCLUSION

#### **Policy Window**

The Multiple Streams theory indicates the opportunity for advocates to push their pet solutions or attention to their special problems is called a policy window. Policy windows are opportunities for action on a given initiative. Windows sometimes open predictably and other times unpredictably. Windows can be opened by events in either the problem or political streams, like a new problem capturing the attention of policymakers or turnover of elected officials. Open windows create opportunities for the separate streams to join but they are not open for extended periods of time and do not occur regularly. Hence, taking advantage of an open window is a powerful tool for advancing a proposal. Policy entrepreneurs can become significant by recognizing when a policy window opens, or may open, and taking advantage of that opening.

In this case, the events promoting the policy window to open occurred in both the problem and political streams. The Tribes were able to have a majority of HCAOG recognize the presence of a problem worthy of being addressed. In turn, Tribes were successful in recognizing the Board's concerns. Second, HCAOG staff indicating the representatives sitting on the HCAOG Board was receptive to allowing a multi-tribal representative seat indicating a political window was open. In addition, HCAOG recently hired a new Executive Director. This turnover in key personnel appears to be a benefit to the tribal governments as the new Executive Director is serving as an impetus.

### **Policy Entrepreneurs and Coupling**

When a policy window opens, it can increase the likelihood of an alternative to reach the decision agenda. Policy entrepreneurs, in addition to investing time, energy, and resources, also take advantage of open windows and assist in the coupling of the streams. Coupling is connecting a policy alternative to something in another stream, such as solutions coupled with problems, proposals linked to politics, or alternatives introduced when agendas change (Kingdon, 2003). Policy entrepreneurs advocate for their proposal. They employ different methods of advocacy, sometimes waiting for a problem that might float by to attach their solution to or for a development in the political stream such as a receptive political climate for their proposal. Policy entrepreneurs play a key role and are central to a subject being moved up on the agenda into a position of enactment. This process of attaching a solution to a problem or recognizing the development in the political stream is called coupling.

Policy entrepreneurs are central figures in advocating for their proposals. Elements contributing to the success of entrepreneurs include a claim to be heard, as they are either considered an expert in a position of formal authority, have the ability to speak for others, are politically connected, have strong negotiating skills, or are persistent. In this subject, the CEO of Cher-Ae Heights Indian Community is the most visible policy entrepreneur, and she has been successful in demonstrating the ability to speak for others, namely the Tribes. She is politically connected and has been very persistent. The Office of Tribal Attorney, Hoopa Valley Tribe and the Economic Director from the Blue Lake

Rancheria have not been as vocal or active as the CEO of Trinidad has, but they are successful entrepreneurs in their own rights. The Office of Tribal Attorney has strong negotiating skills, witnessed in the meetings she attended at HCAOG and at the tribal level. The Office of Tribal Attorney has legal expertise and drafted the tribal JPA. The Economic Director of Blue Lake Rancheria is persistent and attends every HCAOG meeting.

All three entrepreneurs together have been softening the HCAOG Board waiting to take advantage of the open windows they can use to their advantage, the most significant one being the development in the political stream. The policy window opened independently of the entrepreneurs, but they are ready to take advantage of the open window by coupling the political streams with their proposal in hopes of having a greater chance of elevating their proposal to the decision agenda. All policy entrepreneurs anticipated and responded to the political constraints in the development of the tribal JPA proposal. Timing is critical. The time appears to be appropriate for alternative advancement, as the streams are partially aligned as the HCAOG Board recognizes the problem, the policy community has developed a viable proposal, and the politics may be right for their acceptance.

### **Conclusion**

The Multiple Streams Model is a useful framework for examining policy formation. The main concepts from the model – agenda setting, alternative specification, and political dynamics – are present when investigating how the tribal governments in

Humboldt County are attempting to transform policy by requesting access as a voting member of the HCAOG Board. The relevance of the model is demonstrated by analyzing the process employed by the Tribes through problem recognition, development of a viable alternative, and obtaining political consensus.

The Multiple Streams Model asserts the first step of policy formation is agenda setting, as no action will occur if the subject is not prominently being considered by decision makers. The tribal governments in Humboldt County actively ensured this subject appeared noticeably on HCAOG's agenda. Agenda setting was impacted by the problem and political streams. Agenda setting was also impacted by the Tribes, through the Northern California Tribal Chairmen's Association, as they took advantage of AB 307 passage, the focusing event, and accompanied it with a formal request to the Board.

Problem recognition occurred and the condition of denial of a multi-tribal representative seat was elevated to a problem. All participants are aware of the problems. The problem stream involves fairness from two perspectives. One level is the Tribes' perceptions that their exclusion from the Board is unfair while several HCAOG Board members' perception is the unfairness of allowing Tribes on the Board because Tribes are not subject to the same laws and regulations. The HCAOG Board placed this subject on the governmental agenda to further investigate it, demonstrating that step one of the policy formation process is complete.

The next step in policy formation is alternative specification. Consistent with the model, Tribal representatives have been softening HCAOG Board members over the past

year getting them to accept the idea of adding a Tribal representative on the Board. Further, consistent with the model, the alternatives were developed in the policy stream by the tribes in their capacity as the policy community. After discussion, HCAOG identified the tribal JPA as a proposal to which they were receptive and the softening process continued, focusing on that proposal. The proposal of a Tribal JPA was developed to address the concerns raised by some HCAOG Board members to ensure a level playing field for participants.

The time for action arrived, the policy window opened, but the tribal JPA concept was a re-creation of an earlier version of the proposal. The HCAOG and tribes, consistent with the model, continued the redrafting and discussion of the alternative. The proposal was not completely new as the one tribal seat to represent multi-tribes was floating around in the soup, though it was initially framed through a consortium approval. The Tribes and the Board are working together to build consensus and bargaining on constraints to develop a solid proposal to be presented to the Board for a vote. The alternative specification phase is not complete.

As participants in the political stream, HCAOG Board members appear to be receptive. They demonstrate their receptiveness by having active discussions on the subject over the course of the past several months. Tribal membership has been on HCAOG's governmental agenda every month since August. Instead of just saying no, they are discussing this subject in detail to address all concerns and discover the best way to have a multi-tribal seat represent tribal interests on the HCAOG. The policy window

was opened by the indication from tribal representatives and HCAOG staff that the composition of the Board seems in favor of the Tribe's request. The Tribes and HCAOG staff have been engaging the HCAOG Board in efforts to build support for the proposal. HCAOG staff indicated a substantial change as the Chairman of the Board, the Mayor of Ferndale, who in the past voted "no" regarding approval of the Tribal representative, indicated he is in favor of the Tribe's request if HCAOG's concerns are addressed.

The Multiple Streams Model has three independent streams of problems, policies, and politics that operate independently and, at critical times, come together to provide for the greatest opportunity for policy enactment. In this instance, did the streams align? It appears the convergence of the streams was mild and only partial coupling occurred. Coupling is present in the political stream and the problem stream but not in the policy stream. The alternative is still in the process of being finalized. Many elements of the Multiple Streams Theory were present but the proposal was not fully ready for the decision agenda. It remains on the governmental agenda. As it stands now, the political momentum has slowed because the HCAOG Board decided to request a legal opinion for the State Legislative Counsel's Office before moving the subject to the decision agenda. It does not seem likely movement will occur until after the response from the Legislative Counsel's Office.

Analyzing policy formation through the Multiple Streams Model is recommended for policymakers, as it provides a useful foundation and frame for considering the processes involved included agenda setting and alternative specification. In addition to

providing an explanation for why policy formation and enactment occurs, it can explain why something did not come to pass. In this instance, softening up will continue. While coming closer than before, the Tribes still did not see policy enactment. Partial coupling of the streams occurred but the proposal was not finalized, which is the significant reason the subject did not appear on the decision agenda.

## APPENDIX

## Project Documents

## Memorandum

To: Nancy Shulock, Primary Reader  
Su Jin Jez, Secondary Reader

From: Viola Brooks, Graduate Student in Public Policy and Administration  
California State University Sacramento

Date: November, 2012

Re: Submission of Documents Prepared for Project on Tribal Governments and the  
Humboldt County Association of Governments (HCAOG)

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The purpose of this project was to assist the Humboldt County Association of Government, HCAOG, tribal governments and staff increase understanding to promote collaboration in designing a mechanism for multi-tribal representation as a voting member of HCAOG. The goal of this project was to create a request to be submitted by the Tribes to HCAOG that could be accepted in order to have one tribal seat to represent multiple Tribes located in Humboldt County as a voting member of the Board. If the request was unsuccessful then the materials created can be used in the future for educational purposes.

Over the course of that past several months I have actively been involved in identifying, researching and clarifying issues raised in discussions with HCAOG, Humboldt County tribes and their staff. I attended HCAOG meetings and met with HCAOG staff and tribal representatives in order to facilitate topics involved in adding a tribal representative seat on the HCAOG. I was also involved in refocusing and

articulating issues, including investigating whether California laws for Joint Powers Agencies had application to Tribes, such as the Brown Act and the Political Reform Act.

My role involved responding to requests by HCAOG staff and tribes. I had created documents independently and assisted in development of documents for the purpose of education and consensus building for participants. I shared information, disseminated it, and created documents to provide a context for understanding by all participants. I assisted the Tribes in proposal development, specifically the creation of pursuing the tribal Joint Powers Agency. All documents created or information shared was done so to fulfill the project purpose in hope of achieving project goal.

Attached are the documents I prepared for the project:

- 2012 Multi-tribal Membership Request to HCAOG Timeline;
- Legislation Summary Chart for Tribal Government Pursuing Membership with a JPA;
- Three Sovereigns Illustration and Explanation;
- Summary of California Codes Referencing Tribes and JPAs;
- HCAOG and Regional Housing Needs Assessment Information;
- Memorandum to Humboldt County Tribes on Forming a Tribal JPA including providing Sample JPA for the Salton Sea Authority;
- JPA Alternatives Available to Tribes to pursue membership on HCAOG, October 2012;
- Revised Draft HCAOG Membership Criteria October 2012;

## 2012 Timeline

Tribal Membership Request to the Humboldt County Association  
of Governments (HCAOG)

MONTH	ACTIVITY
February	<b>HCAOG formed sub-committee to investigate adding a tribal representative seat to the Board.</b>
April	<b>Northern California Tribal Chairmens' Association (NCTCA) requested one tribal seat to be member of HCAOG to represent all Tribes in Humboldt County.</b>
May – June	<b>HCAOG Board directed HCAOG staff to look into tribal membership on HCAOG. HCAOG staff sent out a survey to identify Board Members' interests in expanding membership.</b>
July	<b>HCAOG Board Members returned survey which identified there is an interest in expanding membership to allow Tribes on HCAOG but identified issues and questions that needed to be addressed before proceeding.</b>
August	<b>Tribes and HCAOG staff researched and prepared draft responses to the HCAOG Board. Tribes and HCAOG staff made presentations to the HCAOG Board on responses to issues and questions previously identified.</b>

September	<p><b>Tribes finalized their responses and made a presentation to the HCAOG Board and presented the following options:</b></p> <ul style="list-style-type: none"> <li><b>A. Form a tribal JPA allowing for one member and one seat;</b></li> <li><b>B. Each Tribe joins and designates one representative adding multiple members occupied with one seat; and</b></li> <li><b>C. Each Tribe joins allowing for eight tribal seats on HCAOG.</b></li> </ul> <p><b>At the September HCAOG Board meeting the HCAOG Board directed the Tribes to pursue the Tribal JPA for purposes of membership on HCAOG and directed HCAOG staff to prepare criteria to be used for expanded membership.</b></p>
October	<p><b>Tribal governments initiate process to form a tribal JPA for the purposes of participating in HCAOG. Tribes intend to form a tribal transportation JPA with the designated representative to be selected by mechanisms indicated in the JPA.</b></p> <p><b>HCAOG staff created draft membership criteria for discussion at the HCAOG Board meeting.</b></p>
November	<p><b>HCAOG Board approved criteria and directed HCAOG staff to obtain a legal opinion from the California Legislative Counsel's Office regarding if Joint Powers Agency's meetings are open to the public and subject to the Brown Act, the Public Records Act, the Political Reform Act and other public interest laws that ensure political transparency.</b></p>

California Legislative Summary Chart on JPAs and  
Tribal Governments

Bill Author, Year	Description	Status/History	Support	Opposition
AB 1137 Hauser, 1987	Designates the Hoopa Business Council a public agency allowing the Tribe to be able to join the Humboldt County Association of Governments.	Chaptered	Hoopa Valley Tribe	None on file
AB 959 Kelley, 2001	Designates the Torres Martinez Desert Cahuilla Indian a public agency allowing the Tribe to be able to join the Salton Sea Authority.	Chaptered	Salton Sea Authority, Torres Martinez Desert Cahuilla Indians, Alliance of California Tribes	None on file
AB 1172 Berg, 2003	Designates the Elk Valley Rancheria Tribal Council a public agency allowing the Tribe to be able to join a JPA with Del Norte County and the City of Crescent City to finance a sewer plant to service all respective jurisdictions.	Chaptered	Elk Valley Rancheria, City of Crescent City, County of Del Norte, Regional Council of Rural Counties	None on file

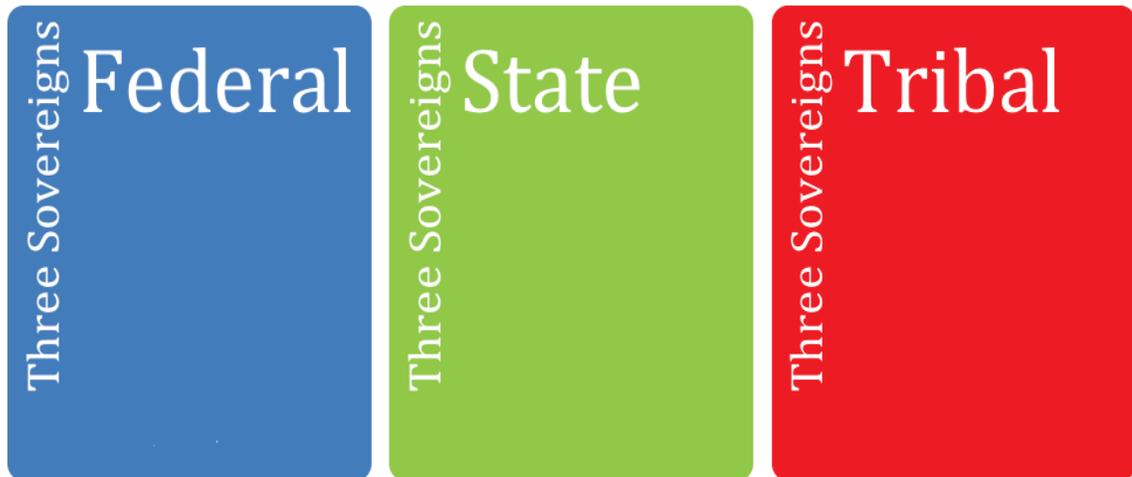
Bill Author, Year	Description	Status/History	Support	Opposition
AB 1747 Wolk, 2005	The Rumsey Band of Wintun Indian can join the Conaway Ranch JPA in Yolo County. This JPA manages the Conaway Ranch which is composed of 17, 200 acres of agriculture and habitat land in eastern Yolo County.	Vetoed by Governor Schwarzenegger	County of Yolo (Co-Sponsor), Rumsey Band of Wintun Indians (Co-Sponsor), Audubon CA, CA Professional Firefighters, CA State Association of Counties, CA Teamsters, CA Tribal Business Council, City of Davis, City of West Sacramento, Planning and Conservation League, Sierra Club of CA, Sierra Club Yolano Group, Tuleyome, Unite-Here, AFL – CIO, University of CA Davis, Yolo Audubon Society, Yolo County Flood Control, and Water Conservation District	CA Farm Bureau Conaway Preservation Group Family Water Alliance Yolo County Taxpayers Association
AB 2762 Levine, 2006	Would have allowed 17 tribal governments to join the Southern California Association of Governments.	Vetoed by Governor Schwarzenegger	Southern California Association of Governments, Agua Caliente Band of Cahuilla Indians, Morongo Band of Mission Indians, Torres Martinez Desert Cahuilla Indians, San Manuel Band of Mission Indians	None on file

Bill Author, Year	Description	Status/History	Support	Opposition
AB 1962 Berg, 2006	Would have allowed the Tribal Council of the Yurok Tribe to join a JPA to restore fisheries in the Klamath River Basin.	Vetoed by Governor Schwarzenegger	Yurok Tribe, Klamath Water Users Association.	None on file
AB 1884 Maze, 2008	Would have allowed the Tule River Tribal Council to join a JPA to develop land near the Porterville airport.	Vetoed by Governor Schwarzenegger	City of Porterville, Porterville Chamber of Commerce	None on file
AB 2166 Chesbro, 2010	Would have allowed the Smith River Rancheria Tribal Council to join the Border Coast Regional Airport Authority.	Vetoed by Governor Schwarzenegger	Border Coast Regional Airport Authority (Co-sponsor), Smith River Rancheria (Co-Sponsor), CA Tribal Business Alliance, City of Brookings, County of Curry Oregon, County of Del Norte, Crescent City – Del Norte County Chamber of Commerce, Elk Valley Rancheria, Ramona Band of Cahuilla Indians, Regional Council of Rural Counties, Susanville Indian Rancheria	None on file

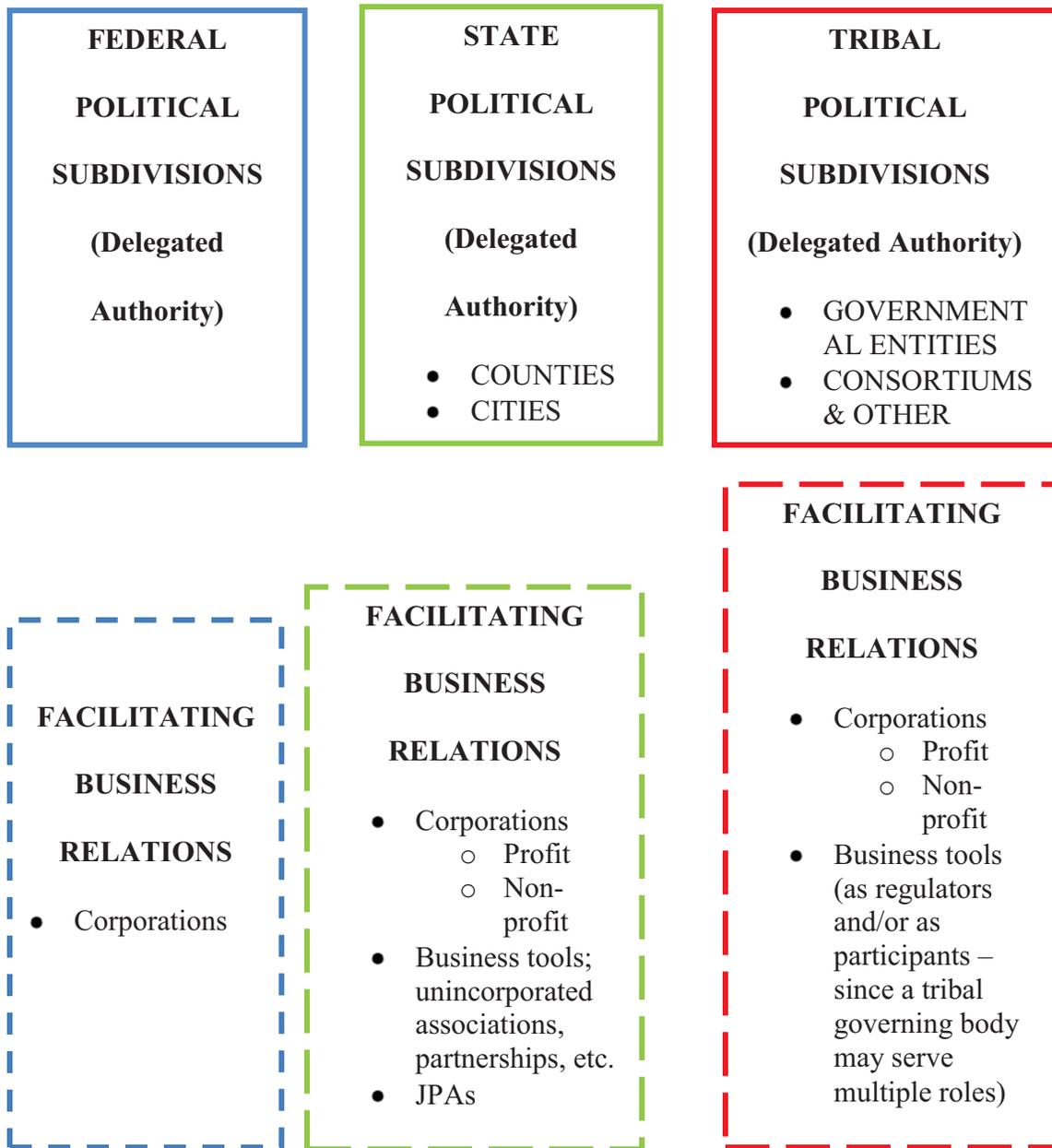
Bill Author, Year	Description	Status/History	Support	Opposition
AB 307 Nestande, 2011	Changes the definition of “public agency” for purposes of joint powers agreements to include a federally recognized Indian Tribe.	Chaptered	United Auburn Indian Community (source) Agua Caliente Band of Cahuilla Indians California Nations Indian Gaming Association California State Firefighters' Association City of La Mesa Coachella Valley Association of Governments Elk Valley Rancheria Heartland Communications Facility Authority San Diego County Supervisor Dianne Jacob Santa Ynez Band of Chumash Indians Smith River Rancheria Susanville Indian Rancheria Yocha Dehe Wintun Nation	None on file

Source: Legislative Counsel (n.d.)

## Three Sovereigns



- The Tenth Amendment of the U.S. Constitution reinforces this idea of parallel sovereignty, declaring that the powers not delegated to the federal government are retained by the 50 states (Pevar, 1992).
- There are currently 566 federally recognized tribes in the United States (BIA, 2012). With powers predating the Constitution, tribes are considered domestic dependent nations, retaining powers of internal self-government. Governing structures vary and often do not incorporate *separation of powers*. A government-to-government relationship exists between tribes and the federal government (Pevar, 1992).



Three Sovereigns Illustration

### Three Sovereigns Explanation

Intergovernmental interests and working relationships are sometimes challenging to understand so laying out a basic framework for understanding is displayed in the Three Sovereigns conceptual chart to demonstrate how different sovereigns can operate and exercise their authority via political subdivisions and legislating to facilitate business relations of each.

The chart identifies and places various entities in groupings that reflect differing types and authorities. An *entity* is something that exists by itself. In particular, legal fictions are usually regarded as entities. A *legal fiction* is a fact assumed or created by courts (Black, 2012). Despite not being natural persons, corporations are recognized by the law to have rights and responsibilities like natural persons ("people"). Governments are treated in a similar manner. Interestingly, a government as a fake person, is often eligible to take advantage of other legal fictions. As an example, the Chinese government may not make political campaign contributions in the United States. However, nothing prevents the Chinese government from acting to form a US corporation that *can* make those contributions.

A political subdivision is a separate legal entity, created by a sovereign, exercising authority *delegated* by the sovereign in accordance with the authorities and limitations established by the sovereign. In the state setting, the term ordinarily includes a county, city, town, village, or school district, and, in many states, can refer to sanitation, utility, reclamation, drainage, flood control, or similar district. The state "gives" certain

powers to city or town governments and those governments cannot act independently because it is not sovereign and must answer to the state (Falmouth, 2004).

As seen by the Three Sovereigns illustration Humboldt County and the incorporated cities located within Humboldt County are political subdivisions with delegated authority from the State of California. Tribes are not a political subdivision of any other government but they have the ability to delegate authority to political subdivisions they may choose to create. HCAOG members posed questions such as, “Why don’t Tribes just incorporate as cities if they want membership?” With the chart, it is readily apparent that Tribes do not incorporate as local municipalities as they have their own, considerably elevated governmental status. The purpose of incorporation is to provide services. Tribes already provide services to their members and residents and would not benefit from incorporating as they remain quasi-sovereign governments. Tribes have responsibility over their citizens and jurisdiction in the same manner as cities, counties and states do. Looking at the Three Sovereigns Illustration it is evident that Tribes are their own sovereignty and it would be unreasonable to ask them to give up their sovereignty to be a political subdivision of the state.

As seen in the Three Sovereigns illustration there is a variety of tools that can be used to achieve the desired end like JPAs, to advance joint interests when working together. JPAs are creatures of the State, governed by California law to facilitate benefits for all interests. The difficulty presented before HCAOG and Humboldt County Tribes is how tribal governments can fit into a JPA, a state political subdivision, when state laws

generally do not apply to them. Tribes could incorporate, but looking at the illustration, the standing of tribes can be clearly seen as one superior to JPAs. Tribes are unwilling to give up their sovereignty to become a political subdivision of the state. HCAOG and the Humboldt County Tribes will need to be creative to address how they can work together in the context of the Three Sovereigns Illustration.

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Summary of California Codes Referencing Tribes and JPAs

CALIFORNIA JOINT EXERCISE OF POWERS ACT Government Code 6500-6536

This allows two or more public agencies by agreement to jointly exercise any power common to them or to form a separate joint powers agency.

California Government Code Section 6500 defines a public agency as follows:

*“As used in this article, "public agency" includes, but is not limited to, the federal government or any federal department or agency, this state, another state or any state department or agency, a county, county board of education, county superintendent of schools, city, public corporation, public district, regional transportation commission of this state or another state, a federally recognized Indian tribe, or any joint powers authority formed pursuant to this article by any of these agencies.”*

This Statute specifically includes a federally recognized Tribe.

Source: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=06001-07000&file=6500-6536>

CALIFORNIA RALPH M. BROWN ACT Government Code 54950-54963

The Legislature finds that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people’s business. The intent of this law is that actions be taken openly and that deliberations be conducted openly.

California Government Code Section 54951 defines local agency as follows:

*“As used in this chapter, "local agency" means a county, city, whether general law or chartered, city and county, town, school district, Municipal Corporation, district, political subdivision, or any board, commission or agency thereof, or other local public agency.”*

This statute does not specifically reference a federally recognized Indian Tribe.

Source: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=54001-55000&file=54950-54963>

#### CALIFORNIA POLITICAL REFORM ACT (1974 Statewide Initiative – Proposition 9)

The Political Reform Act requires detailed disclosure of the role of money in California politics. This includes the disclosure of contributions and expenditures in connection with campaigns supporting or opposing state and local candidates and ballot measures as well as the disclosure of expenditures made in connection with lobbying the State Legislature and attempting to influence administrative decisions of state government. The Act created an independent state agency – the Fair Political Practices Commission which is responsible for interpreting and enforcing the Act.

California Government Code § 82003 define an Agency as follows:

*“Agency” means any state agency or local government agency.*

This statute does not specifically reference a federally recognized Indian Tribe.

California Government Code § 82041 define Local Government Agency as follows:

*“Local government agency” means a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing. Amended by Stats. 1984, Ch. 727, effective July 1, 1985.*

This statute does not specifically reference a federally recognized Indian Tribe.

Source: <http://www.sos.ca.gov/prd/> and [http://www.fppc.ca.gov/Act/2012\\_Act.pdf](http://www.fppc.ca.gov/Act/2012_Act.pdf)

#### CALIFORNIA PUBLIC RECORDS ACT Government Code Sections 6250-6276.48

California Government Code Section 6252 defines local and public agency as follows:

*(b) “Local agency” includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.*

*(d) “Public agency” means any state or local agency.”*

This statute does not specifically reference a federally recognized Indian Tribe. While Indian Tribes are generally subject to the reporting requirements of the Political Reform Act of 1974 there is no provision of state or federal law prohibiting tribes from making political contributions

Source: [http://ag.ca.gov/publications/summary\\_public\\_records\\_act.pdf](http://ag.ca.gov/publications/summary_public_records_act.pdf) and Letter to Senator Wiggins, from Emilia Curren, Deputy Legislative Counsel, Legislative Counsel of California, dated December 19, 2007

#### CONCLUSION

Based on a review of the above California laws the Joint Exercise of Powers Act is the only Statute that specifically references a federally recognized Indian Tribe. Further, the Legislative Counsel of California's letter indicates:

*“Where the Legislature has intended to make provisions of state law that are applicable to counties or cities also applicable to an Indian tribe, it has expressly included a reference to an Indian Tribe.”*

REGIONAL HOUSING NEEDS ALLOCATION (RHNA) AND  
COUNCIL OF GOVERNMENTS (COGS)

What is the Housing Element?

- The Housing Element is one of seven planning elements that California law requires to be covered by each city's and county's general plan.
- While planning for housing is generally a local land use issue, the State recognizes that adequately planning for regional housing needs is important for advancing the State's long-term economic competitiveness and for meeting its goal of providing decent housing and a suitable living environment for every California family.
- The purpose of the Housing Element is to provide a comprehensive analysis of a local jurisdiction's housing needs and to detail the policies and programs that will be implemented to meet those needs.
- This analysis must be periodically updated (generally every five years) and certified by the California Department of Housing and Community Development (HCD).

What is the role of a COG in the RHNA?

- The Housing Element Update process begins when HCD calculates statewide housing needs based on population projections from California's Department of Finance.
- HCD then allocates the statewide housing needs to Councils of Governments (COG) throughout California.
- COGs in turn assign their share to the cities and counties that comprise the region for which each COG is responsible. This last stage of allocation-from COGs to cities and counties-is known as the Regional Housing Needs Allocation, or RHNA, and includes housing needs across income categories.
- COGs must develop a distribution methodology and allocate shares to cities and counties, *subject to HCD review and approval*.

What is the role of a COG in determining how allocated shares are implemented?

- COG involvement is limited to share allocation.
- “Any authority of the council of governments to review and revise the share of a city or county of the regional housing need under this section shall not constitute authority to revise, approve, or disapprove the manner in which the share of the city or county of the regional housing need is implemented through its housing program.” (Cal. Govt. Code §65584.05)

How might HCAOG be impacted by adding a tribal seat in relation to RHNA?

- RHNA issues pertain to entities that receive a regional housing need allocation under state law. This, of course, does not include tribes who have their own independent housing programs. The allocation process is largely formula driven and subject to state oversight. HCAOG makes the recommendations for local allocations which can become political. HCAOG could request limiting voting on RHNA issues to entities that receive a regional housing need allocation under state law.

Source: "Regional Housing Needs Assessment (RHNA)." *Department of Housing and Community Development*. N.p., 06 May 20120. Web. 21 Sept. 2012.  
<[http://www.hcd.ca.gov/hpd/housing\\_element2/HN\\_PHN\\_regional.php](http://www.hcd.ca.gov/hpd/housing_element2/HN_PHN_regional.php)>.

To: North Coast Tribal Chairman's Association (NCTCA) and the North Coast Tribal Transportation Commission (NCTTC)

From: Viola Brooks, Public Policy and Administration Student  
California State University Sacramento Student

Re: Information Regarding Joint Powers Agreements (JPA) in California in Relation to Joining the Humboldt County Association of Governments

Date: September 24, 2012

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### Background on JPAs

Joint Powers are put into effect when different public jurisdictions agree to work corporately to alleviate a common problem or address a common issue. JPAs are authorized through California law in Government Code section 6500 and known as the Joint Exercise of Powers Act. JPAs can be referred to as Joint Powers Agreements, Joint Powers Authorities or Joint Powers Agencies.

JPA meetings are open to the public like other local agencies. JPAs must follow the Ralph M. Brown Act, the California Public Records Act, the Political Reform Act, and other public interest laws. They must print agendas and permit the public to participate in their meetings.

The public agencies that create JPAs have a continuing responsibility to monitor monitor/oversee them. Although no state agency directly controls JPAs, several collect reports and data on JPAs, including the Secretary of State's office, the State Controller's office, and the California Debt and Investment Commission. County civil grand juries function as civil watchdogs and may examine the records of JPAs operating in the county, while county auditors keep tabs on the financial reports of JPAs.

### Tribal Governments and JPAs

It is a challenge for federal recognized tribal governments to join JPAs as JPAs are authorized under state law and Tribes are generally not subject to state law. The California Joint Exercise of Powers Act, Cal. Govt. Code §6500, et seq., was amended in 2011 to add section 6500, which provides as follows:

*As used in this article, "public agency" includes, but is not limited to, the federal government or any federal department or agency, this state, another state or any state department or agency, a county, county board of education, county superintendent of*

*schools, city, public corporation, public district, regional transportation commission of this state or another state, a federally recognized Indian tribe, or any joint powers authority formed pursuant to this article by any of these agencies. (emphasis added.)*

A federally recognized Indian Tribe can now join a JPA with the only restriction of not allowing a JPA that includes a federally recognized tribal government to authorize bonds pursuant to Government Code 6529.5 as follows:

*(a) Any joint powers authority that includes a federally recognized Indian tribe shall not have the authority to authorize or issue bonds pursuant to the Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584)) unless the public improvements to be funded by the bonds will be owned and maintained by the authority or one or more of its public agency members, and the revenue streams pledged to repay the bonds derive from the authority, one or more of its public agency members, or any governmental or public fund or account the proceeds of which may be used for that purpose.*

With the 2011 change in California law now a federally recognized tribe or a joint powers authority formed by tribes could qualify as a “public agency” to enter into a joint powers agreement.

### Forming a JPA

JPA's are easy to form. Research indicates to create a JPA in California it needs to be registered with the Secretary of State's office and a copy sent to the State Controller. The Secretary of State directs JPA entities to file the Notice of a Joint Powers Agreement when creating a new entity or file the Notice of Amendment of a Joint Powers Agreement pursuant to California Government Code 6503.5. To establish or amend a JPA the applicable Notice would be completed and returned to the Secretary of State while a copy of the document sent to the State Controller.

The North Coast Tribal Chairman's Association made a request to HCAOG for one tribal seat representing all the Tribes in Humboldt County, hence, all the tribal governments would essentially be joining HCAOG being served by one representative. Multiple Tribes does not meet the definition of public agency under the code as it specifically indicates “a tribal government” not tribal governments. It may be appropriate for the NCTCA to consider creating a tribal joint powers authority which could be administered by NCTCA for purposes of seating a tribal representative on HCAOG. A tribal joint powers agreement would provide a forum to address and clarify a number of the concerns identified by HCAOG and be an option provided by state law.

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To: HCAOG Board, Staff and Tribes

From: Viola Brooks, Public Policy and Administration Student,  
California State University Sacramento

Re: Humboldt County Tribal Governments Membership Request Clarification

Date: October, 2012

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I prepared this using the information I've obtained from multiple sources including HCAOG staff and tribal representatives. It is my hope that this memo provides clarification that will assist the Board in making an informed decision.

#### Tribal Membership in HCAOG

The federally recognized Tribes located in Humboldt County are the Bear River Band of Rohnerville Rancheria, Big Lagoon, Blue Lake Rancheria, Hoopa Valley Tribe, Karuk Tribe, Trinidad Rancheria, Wiyot Tribe, Yurok Tribe. In April, the Northern California Tribal Chairman's Association made a request to HCAOG as a means to achieve one tribal seat on the Board to represent all the tribal interest in Humboldt County.

As previously discussed at the September 24, 2012, HCAOG meeting, an organization of tribal governments (multi-tribal) is not defined as a public agency; rather, *a federally recognized Indian tribe*, is included as a public agency authorized pursuant to California

Government Code Section 6500 to enter into a joint powers agreement. Further, any joint powers authority formed pursuant to this article by any of the specified agencies is included as a public agency. California Government Code Section 6500 defines a public agency as follows:

*“As used in this article, "public agency" includes, but is not limited to, the federal government or any federal department or agency, this state, another state or any state department or agency, a county, county board of education, county superintendent of schools, city, public corporation, public district, regional transportation commission of this state or another state, a federally recognized Indian tribe, or any joint powers authority formed pursuant to this article by any of these agencies.”*

Thus, a federally recognize tribe is eligible to join HCAOG, and may form a JPA with another public agency, including one or more federally recognized Tribes, pursuant to California Government Code Section 6500. That JPA would be eligible to join HCAOG.

#### Tribal JPA Alternative

Based on feedback provided by the HCAOG Board several Tribes have met to move forward with formation of a tribal JPA as follows:

- The Humboldt County Tribes (Tribes) interested in joining HCAOG will execute a cooperative agreement, file it with the Secretary of State and send a copy to the State Controller as indicated in §6503.5-6503.7, creating a JPA titled the Humboldt County Tribal Transportation Commission, formed pursuant to State law;
  - All Humboldt County Tribes will be invited to participate in the Tribal JPA but will not be required to join as JPAs are voluntary. At this time three Tribes have committed to pursuing the tribal JPA option which are: Hoopa Valley Tribe, Blue Lake Rancheria and Trinidad Rancheria;

### Tribal JPA Alternative Continued

- Through development and filing of the cooperative agreement, the Tribes will create a separate JPA entity, taking advantage of opportunities and authorizations established under California law. As a creature of state law, the JPA, not each Tribe, will be subject to the Brown Act, Public Records Act and the Political Reform Act in the same manner consistent with other JPAs in the state;
- The JPA formed by the Tribes will not be the Northern California Tribal Chairman's Association as originally requested in April of 2012; rather, it will be a Tribal Transportation Commission. The logic behind this is to have a tribal JPA having a specific focus on transportation related issues and functions to better match HCAOG's purposes and goals;
- The Tribal JPA approach addresses HCAOG Board Members concerns about (1) uncertainty relative to how a single multi-tribal seat will function, and (2) Tribes not being subject to the same laws and regulations as other public agencies. Forming a Tribal Transportation JPA as the public agency pursuing a seat on HCAOG provides a definite framework for organization and operation of a multi-tribal agency, and it relieves the need to grapple with imposing or limiting tribal sovereignty. The tribal JPA will be bound by California law and subject to the same laws and regulations as other public entities;
- In the event an individual Tribe seeks membership or if the Board finds it appropriate to apply to the Tribal JPA, Tribes have expressed willingness to commit to limitations on political contributions in Humboldt County for the purposes of entering into, and maintaining a position on HCAOG, provided any such limitation is based on a reasonable standard. The standard will be referenced in the finalized HCAOG Membership Criteria;
- The Tribal JPA will include provisions that provide for selection and designation of an elected tribal official from a Humboldt County Tribe to represent them on HCAOG;

### Tribal JPA Alternative Continued

- The Tribal JPA will include provisions that will restrict the ability of a member tribe to individually apply for HCAOG membership, and will include provisions specifying the impact of dissolution of the Tribal JPA;
- The Tribal JPA would enjoy right of equal participation as other HCAOG Board members, subject to terms of the HCAOG JPA, and may include limitation on participating in voting on RHNA issues;
- Other Tribes located outside of Humboldt County can be included in the tribal JPA in the same manner as other states are authorized to join JPAs pursuant to California Government Code Section 6500. The participation of the out of county Tribes will not include representation on HCAOG;
- The Tribal Representative would have one vote and participate as a full member of HCAOG, with the possible exception of RHNA issues, and the current processes involved in planning and completing projects would not change due to the inclusion of the Tribal seat.

HCAOG Proposed Revised Membership Criteria (10/18/12)

1. PUBLIC AGENCY STATUS:
  - a. Conform to status of a “public agency” as defined in the Joint Exercise of Powers Act, California Government Code 6500;
  
2. ELECTED OFFICIAL:
  - a. The representative from the applying public agency designated to serve on the HCAOG Board, shall be an “elected official” of a government in Humboldt County;
  
3. LIMITED CAMPAIGN CONTRIBUTIONS:
  - a. Any applying public agency seeking membership on HCAOG will conform with applicable state laws governing political contributions. Applicants not subject to such laws shall refrain from making political contributions to the extent the contribution can be reasonably shown to be related HCAOG business. (Generally, contributions prohibited to local political campaigns or individual candidates for local offices that are represented on the HCAOG Board. Specifically, Sheriff, Assessor or DA are allowable but not the County Board of Supervisors);
    - i. Board member from Eureka requested to remove “reasonably be shown to be related to the mission of HCOAG”. However, this is the legal standard identified by the State’s Legislative Counsel as “reasonable”, necessary to avoid being arbitrary and capricious;
  - b. Consequence for making a campaign contribution to an individual candidate for local office will be loss of membership on HCAOG Board;
  - c. This standard would restrict campaign contributions (consistent with the standard) from the applying public agency. Individuals or enterprises can support candidates but public agencies cannot.
  
4. BROWN ACT:
  - a. The representative from the applying public agency, that sits on the HCAOG Board, will be subject to the Brown Act in relation to HCAOG business;

HCAOG Proposed Revised Membership Criteria Continued (10/18/12)

5. REGIONAL HOUSING NEEDS ASSESSMENT (RHNA):
  - a. Any applying public agency that is not a direct recipient of housing allocations distributed by HCAOC through the Regional Housing Need Assessment (RHNA) shall not vote on RHNA matters;
  
6. ROAD MILES:
  - a. Any applying public agency shall possess and maintain, individually or collectively, public roadways system greater than five (5) miles; and
  
7. POPULATION:
  - a. Any applying public agency, individually or collectively, shall include a population of at least three hundred (300) persons residing within the entity jurisdictional boundaries.

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